

Protest of)	Date: February 1, 1990
)	
BELL & HOWELL COMPANY)	
)	
Solicitation No. 104230-89-A-0188)	P.S. Protest No. 90-3

DECISION

Bell & Howell Company has protested the inclusion in Solicitation No. 104230-89-A-0188 for bar code sorters of drawings which, it claims, violates its proprietary data rights.

Bell & Howell claims that, in 1982, it furnished 246 bar code sorters to the Postal Service under contracts which contained the standard Postal Service "Rights in Technical Data" clause. Since the bar code sorters had been developed with Bell & Howell's own funds, in connection with those contracts it provided drawings to which the Postal Service only received limited data rights. However, Bell & Howell claims that the Postal Service, in direct violation of its earlier contractual commitments, has reproduced its drawings on Postal Service paper without its restrictive legends and has furnished this data to prospective offerors. Bell & Howell objects to the unilateral disclosure of its protected data rights to other offerors.^{1/}

We summarily dismiss Bell & Howell's protest pursuant to Procurement Manual (PM) 4.5.7 p., because its subject is not appropriate for review by our office. The Comptroller General has declined to address bid protests which allege that the government has infringed a protestor's proprietary rights, stating:

[T]he appropriate remedy for a firm that contends that the government has infringed its proprietary rights is an action against the government for damages or administrative settlement of its claim.

^{1/} A difficulty with Bell & Howell's protest is that it does not explicitly request relief from our office for the alleged impropriety. While Bell & Howell's protest clearly contained an expression of dissatisfaction as to the present bar code sorter solicitation, one must infer that the relief it requests is for the Postal Service to stop misusing its proprietary rights. It is well settled that, at an absolute minimum, a protest must contain "both an expression of dissatisfaction and a request for corrective action." International Mailing Systems, P.S. Protest No. 84-13, April 27, 1984; Radiation Systems, Inc., Comp. Gen. Dec. B-211732, October 11, 1983, 83-2 CPD &434. However, given our resolution of its protest, we need not address the adequacy of the protest in this respect.

Q-Dot, Inc., Comp. Gen. Dec. B-235688, September 28, 1989, 89-2 CPD &280; see also Del Mar Avionics - Reconsideration, Comp. Gen. Dec. B-231124.2, February 9, 1989, 89-1 CPD & 131; Garrett Pneumatic Systems Division, Comp. Gen. Decs. B-207213 et seq., May 6, 1982, 82-1 CPD & 435. Q-Dot, Inc. is particularly on point; there, the protestor asserted that award of a Phase II contract to any offeror other than it would violate its proprietary data rights because the Phase II specification used Q-Dot's technical data from the Phase I contract. We adopt the rationale set forth in the above decision and hold that the allegation that a firm's proprietary data rights have been violated is not cognizable under our bid protest regulations.

The protest is dismissed.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[checked against original JLS 5/26/93]